mudslides, snowstorms, drought, fires, floods, or explosions, which in the determination of the Secretary cause damage of sufficient severity and magnitude to warrant Federal housing assistance;

(2) Housing needs resulting from emergencies, as certified by the Secretary, other than disasters described in paragraph (a)(1) of this section. Emergency housing needs that can be certified are only those that result from unpredictable and sudden circumstances causing housing deprivation (such as physical displacement, loss of Federal rental assistance, or substandard housing conditions) or causing an unforeseen and significant increase in low-income housing demand in a housing market (such as influx of refugees or plant closings);

(3) Housing needs resulting from the settlement of litigation; and

(4) Housing in support of desegregation efforts.

(b) Applications for funds retained under paragraph (a) of this section shall be made to the field office, which will make recommendations to Headquarters for approval or rejection of the application. Applications generally will be considered for funding on a first-come, first-served basis. Specific instructions governing access to the Headquarters Reserve shall be published by notice in the FEDERAL REGISTER, as necessary.

(c) Any amounts retained in any fiscal year under paragraph (a) of this section that are not reserved by the end of such fiscal year shall remain available for the following fiscal year in the program under §791.101(a) from which the amount was retained. Such amounts shall be allocated pursuant to §791.403(b)(2).

PART 792—PUBLIC HOUSING AGENCY SECTION 8 FRAUD RECOVERIES

Subpart A—General Provisions

Subpart B—Recovery of Section 8 Funds

AUTHORITY: 42 U.S.C. 1437f note and 3535(d).

SOURCE: 59 FR 9409, Feb. 28, 1994, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 792 appear at 64 FR 26640, May 14, 1999.

Subpart A—General Provisions

§ 792.101 Purpose.

The purpose of this part is to encourage public housing agencies (PHAs) to investigate and pursue instances of tenant and owner fraud and abuse in the operation of the Section 8 housing assistance payments programs.

[64 FR 26640, May 14, 1999]

§ 792.102 Applicability.

(a) This part applies to a PHA acting as a contract administrator under an annual contributions contract with HUD in any section 8 housing assistance payments program. To be eligible to retain section 8 tenant or owner fraud recoveries, the PHA must be the principal party initiating or sustaining an action to recover amounts from families.

(b) This part applies only to those instances when a tenant or owner committed fraud, and the fraud recoveries are obtained through litigation brought by the PHA (including settlement of the lawsuit), a court-ordered restitution pursuant to a criminal proceeding, or an administrative repayment agreement with the family or owner as a result of a PHA administrative grievance procedure pursuant to, or incorporating the requirements of, §982.555 of this title. This part does not apply to cases of owner fraud in PHA-owned or controlled units, or where incorrect payments were made or benefits received because of calculation errors instead of willful fraudulent activities.

(c) This part applies to all tenant and owner fraud recoveries resulting from litigation brought by the PHA (including settlement of the lawsuit), or a court-ordered restitution pursuant to a

criminal proceeding obtained on or after October 8, 1986, and to all tenant and owner fraud recoveries obtained through administrative repayment agreements signed on or after October 28, 1992.

[59 FR 9409, Feb. 28, 1994, as amended at 64 FR 26640, May 14, 1999]

§ 792.103 Definitions.

Fraud and abuse. Fraud and abuse means a single act or pattern of actions:

(1) That constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead; and

(2) That results in payment of section 8 program funds in violation of section 8 program requirements.

The terms *Public Housing Agency (PHA)* and *Indian Housing Authority (IHA)* are defined in 24 CFR part 5.

Judgment. Judgment means a provision for recovery of section 8 program funds obtained through fraud and abuse, by order of a court in litigation or by a settlement of a claim in litigation, whether or not stated in a court order.

Litigation. A lawsuit brought by a PHA to recover section 8 program funds obtained as a result of fraud and abuse.

Principal party in initiating or sustaining an action to recover. Principal party in initiating or sustaining an action to recover means the party that incurs more than half the costs incurred in:

(1) Recertifying tenants who fraudulently obtained section 8 rental assistance;

(2) Recomputing the correct amounts owed by tenants; and

(3) Taking needed actions to recoup the excess benefits received, such as initiating litigation.

Costs incurred to detect potential excessive benefits in the routine day-to-day operations of the program are excluded in determining the principal party in initiating or sustaining an action to recover. For example, the cost of income verification during an annual recertification would not be counted in determining the principal party in initiating or sustaining an action to recover.

Public housing agency (PHA). A public housing agency as defined in § 791.102.

Repayment agreement. Repayment agreement means a formal document signed by a tenant or owner and provided to a PHA in which a tenant or owner acknowledges a debt, in a specific amount, and agrees to repay the amount due at specific time period(s).

[59 FR 9409, Feb. 28, 1994, as amended at 61 FR 5212, Feb. 9, 1996; 64 FR 26640, May 14, 1999]

Subpart B—Recovery of Section 8 Funds

§ 792.201 Conduct of litigation.

The PHA must obtain HUD approval before initiating litigation in which the PHA is requesting HUD assistance or participation.

§ 792.202 PHA retention of proceeds.

(a) Where the PHA is the principal party initiating or sustaining an action to recover amounts from tenants that are due as a result of fraud and abuse, the PHA may retain, the greater of:

(1) Fifty percent of the amount it actually collects from a judgment, litigation (including settlement of lawsuit) or an administrative repayment agreement pursuant to, or incorporating the requirements of, § 982.555 of this title; or

(2) Reasonable and necessary costs that the PHA incurs related to the collection from a judgment, litigation (including settlement of lawsuit) or an administrative repayment agreement pursuant to, or incorporating the requirements of, § 982.555 of this title. Reasonable and necessary costs include the costs of the investigation, legal fees and collection agency fees.

(b) If HUD incurs costs on behalf of the PHA in obtaining the judgment, these costs must be deducted from the amount to be retained by the PHA.

[59 FR 9409, Feb. 28, 1994, as amended at 64 FR 26640, May 14, 1999]

§ 792.203 Application of amounts recovered.

(a) The PHA may only use the amount of the recovery it is authorized to retain in support of the section 8 program in which the fraud occurred.

(b) The remaining balance of the recovery proceeds (i.e., the portion of recovery the PHA is not authorized to retain) must be applied as directed by HUD.

§ 792.204 Recordkeeping and reporting.

To permit HUD to audit amounts retained under this part, an PHA must maintain all records required by HUD, including:

(a) Amounts recovered on any judgment or repayment agreement;

(b) The nature of the judgment or repayment agreement; and

(c) The amount of the legal fees and expenses incurred in obtaining the judgment or repayment agreement and recovery.

(Approved by the Office of Management and Budget under Control Number 2577–0053)

PARTS 793–798 [RESERVED]